

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

4/25
p/s in brief

77-7026

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-7026

INTER-REGIONAL FINANCIAL GROUP, INC.,
Plaintiff-Appellee,

—v.—

CYRUS HASHEMI,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

S U P P L E M E N T A L A P P E N D I X

PAUL E. KNAG
Cummings & Lockwood
Attorneys for Plaintiff-Appellee
One Atlantic Street
Stamford, Connecticut 06904

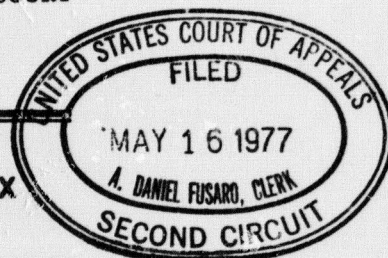


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EXCERPTS FROM DEPOSITION OF ROBERT W. FISCHER,
AUGUST 31, 1976

9

1 A In early December of 1975.

2 Q Early December 1975?

3 A Yes.

4 Q Might it have been early November, a month earlier?

5 A It could have been early November -- it was November or
6 December, it was in November and December that discussions
7 took place, I think it was in December that the loans were
8 placed, but I guess it was in November as a matter of fact.

9 MR. MURPHY: Off the record.

10 (Discussion had off the record.)

11 MR. MURPHY: On the record.

12 Could you read me my last question and the answer.

13 (The last question and answer were
14 read by the reporter.)

15 BY MR. MURPHY:

16 Q Now, what was the purpose of the borrowing -- or question
17 withdrawn.

18 What was the amount of the loan from Banque Scandinave?

19 A \$250,000.

20 Q And what was the purpose of the loan?

21 A The purpose of the loan was to provide working capital for
22 Coronado.

23 Q Were any part of the proceeds of the loan turned over to either
24 Inter-Regional Financial Group or Cyrus Hashemi?

25 A I don't know whether any were turned over to Cyrus Hashemi,

1 but none were turned over to IFG or DKQ.

2 Q So far as you know, the whole \$250,000 went directly to
3 Coronado?

4 A As far as I know it did, yes.

5 Q Now, who negotiated the loan with Banque Scandinave?

6 A Cyrus Hashemi.

7 Q Was there any security for the loan?

8 A A letter of credit that was furnished by IFG.

9 Q And who issued the letter of credit?

10 A First National Bank of St. Paul.

11 Q And was that letter of credit issued at the request of IFG?

12 A It was issued at the request of IFG, yes.

13 MR. MURPHY: For the sake of
14 clarity, perhaps we can refer to "Inter-Regional Financial
15 Group" as "IFG" and shorten everything.

16 THE WITNESS: Yes, and "DKQ" for
17 "Dain, Kalman & Quail."

18 BY MR. MURPHY:

19 Q Now, had IFG or Dain, Kalman & Quail had a banking relationship
20 for any period of time prior to this with First National Bank
21 of St. Paul?

22 A Yes.

23 Q For approximately how long?

24 A Well, I'm sure for a good period of time, because we had
25 small banking relationship in DKQ and from time to time have

1 from First National Bank?

2 A No, I don't believe so.

3 Q What action, if any, was taken by the Board of Directors sub-
4 sequent to that meeting with regard to either the loan or the
5 letter of credit?

6 A I'm not aware of any action that the Board took relative to
7 the loan or the letter of credit.

8 Q All right. Did you or any other officers of IFG take any
9 action with regard to either the loan or the letter of credit?

10 A Yes. Tom Holloran, who is the Chairman and the President,
11 took action to extend the letter of credit.

12 Q And can you tell us what action he took?

13 A Either directly or indirectly through Joe Gallick, the
14 Treasurer, he arranged for the First National Bank of St.
15 Paul to extend a letter of credit.

16 Q And First National Bank of St. Paul agreed to extend the
17 letter of credit?

18 A Ah, yes.

19 Q Can you tell us on what terms and conditions?

20 A On the same terms and conditions of its original issuance.

21 Q For an additional period --

22 A (Interrupting) For an additional period that ran, I believe,
23 until at least December 31.

24 Q 1976.

25 A 1976.

1 Q Is this a copy of the advice received from the First National
2 Bank of St. Paul that the letter of credit had been extended
3 (indicating)?

4 A Yes, that is what it appears to be.

5 (Fischer Deposition Exhibit C was
6 marked for identification.)

7 MR. MURPHY: And if we can go off
8 the record for a moment.

9 (Discussion had off the record.)

10 MR. MURPHY: On the record.

11 MR. KNAG: Could we mark these
12 Plaintiff's 1, 2, 3, and 4.

13 (Plaintiff's Deposition Exhibits
14 Nos. 1, 2, 3, and 4 were marked
15 for identification.)

16 MR. KNAG: I will put on the record
17 our understanding the documents we have marked as Plaintiff's
18 1, 2, 3, 4 are documents which have been provided by the
19 First National Bank of St. Paul, and it is conceded they are
20 business records within the meaning of the statute and
21 become part of the record of this proceeding, and in view of
22 that concession it will not be necessary to hold the noticed
23 deposition of the bank.

24 MR. MURPHY: Just so that the
25 record is clear, why don't you identify what each of the

1 documents are.

2 MR. KNAG: Plaintiff's Exhibit
3 No. 1 is advice from the First National Bank of St. Paul to
4 the Banque Scandinave that the bank has wired Federal funds
5 to its account re letter of credit 4378 in the sum of
6 \$250,000.

7 Plaintiff's Exhibit No. 2 is a note for \$250,000 dated
8 July 15, 1976, entered into by Inter-Regional Financial Group
9 in favor of the bank of St. Paul.

10 Plaintiff's Exhibit No. 4 is an officers' comments
11 dated 7-15-76, stating that the purpose of the \$250,000 loan
12 is to pay for drawing under letter of credit number 4378.

13 And Plaintiff's Exhibit No. 3 is an internal bank
14 document entitled "REQUEST FOR FED TRANSFER," indicating
15 two hundred fifty thousand Federal funds transfer to the
16 account of Banque Scandinave by First National Bank of St. Paul

17 Also the fifth document which is supplied by the bank
18 of St. Paul at my request today was the document that is
19 entitled defendant's Exhibit C, and the same concession
20 concerning business record applies to this document. This
21 document indicates that the letter of credit number 4378 was
22 extended to January 14, 1977.

23 I thank you for your courtesy in that regard.

24 BY MR. MURPHY:

25 Q Now, on or about May 24, 1976, were you advised by Mr. Hashemi

1 position in that regard?

2 A Well, I think prior to this meeting the letter of credit had
3 been extended, had, in fact, been extended, so that was the
4 only other accommodation that they were involved in.

5 Q Now, during the course of this meeting it was confirmed that
6 the Banque Scandinave had agreed to extend the loan for an
7 additional period of six months, isn't that correct?

8 A I think that the Chairman noted that the extension had been
9 granted, at least that was in the draft. I don't see it
10 here, or I missed it.

11 Q Referring to page two, the middle of the last paragraph, I
12 ask you if that refreshes your recollection (indicating)?

13 A Yes, yes, it had been. I felt he had stated that in his
14 recitation, and he did.

15 Q Now, did IFG take any position with regard to obtaining
16 additional indemnity or guarantees from either Coronado or
17 Mr. Hashemi at this meeting?

18 A They did not take any position. We stated the position we
19 had in our discussions with Hashemi that we wanted additional
20 collateral for our indemnity in order to give him things
21 that he wanted.

22 Q As security in addition to the Indemnity and Guaranty
23 Agreement of February 11?

24 A Right.

25 Q Now, was there any discussion of liquidation of Coronado

1 if suitable arrangements for refinancing and reorganization
2 could be agreed to, between the management team and any of
3 the shareholders, or any other person, that we would consider
4 the circumstances and support them if they were viable.

5 Q Now, when was demand made upon IFG for payment under the
6 letter of credit, do you know?

7 A It was made, I believe, in the second week in July.

8 Q And by whom was it --

9 A (Interrupting) Of 1976.

10 Q And by whom was it made?

11 A By the First National Bank of St. Paul.

12 Q And do you know when the First National Bank of St. Paul was
13 called upon to pay Banque Scandinave?

14 A My recollection is that the two notices were within 24 or
15 48 hours -- perhaps these documents from the bank give the
16 exact date.

17 Q Now, this repayment was made after the time Banque Scandinave
18 had agreed to extend the loan --

19 A (Interrupting) Yes.

20 Q (Continuing) -- for an additional period of six months.

21 A Ah, yes.

22 Q Do you know why the note was called due at this point?

23 A I believe in their notice of intention to call that they
24 cited the unpaid interest.

25 Q And do you know what the amount of the interest was?

1 G, was there any discussion of the debts of the company?

2 A Yes. The Chairman detailed various matter of debts that the
3 company had and conversations with its creditors. He also
4 made it a matter of record in the meeting that several of the
5 creditors were aware that the meeting was being held and that
6 they would be notified as to the position of the company to
7 take relative to their debts after the meeting, and he
8 detailed the fact that there were rental arrears and salaries
9 hadn't been paid, and without submitting as a matter of
10 record in the meeting he detailed a long list of liabilities
11 that were unpaid.

12 Q And at the time of the meeting were there funds available to
13 pay these various liabilities?

14 A Not according to the officers of the company.

15 Q Who was in charge of paying bills of Coronado at the time of
16 this Board of Directors meeting and thereafter -- what
17 individual specifically?

18 MR. MURPHY: You are referring to the
19 meeting of June 8?

20 MR. KNAG: June 8, yes.

21 A Well, the financial Vice-President was a Raymond Hill, and
22 he had been a responsible financial executive of the company
23 for some time.

24 BY MR. KNAG:

25 Q And who hired Mr. Hill?

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

INTER-REGIONAL FINANCIAL
GROUP, INC.

PLAINTIFF

V.

CYRUS HASHEMI

DEFENDANT

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:
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:
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:
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:

CIVIL ACTION NO. B-76-216

AFFIDAVIT

STATE OF MINNESOTA)

) SS

COUNTY OF HENNEPIN)

Minneapolis

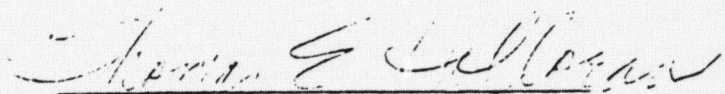
January 5, 1977

Thomas E. Holloran, being first duly sworn, deposes and says:

1. I am Chairman of the Board and President of the Plaintiff herein and make this affidavit in partial opposition to the Defendant's motion for stay of attachment order.
2. In the course of the last few months, Plaintiff has become aware of numerous claims against the Defendant, Cyrus Hashemi, by third parties. Some of these involve very substantial amounts of money and at least one such claim is now in litigation in California.
3. In addition, Plaintiff has been advised that the Defendant is in the process of organizing a new business venture in New York, and the Plaintiff is concerned that additional liabilities may be incurred by the Defendant in connection with this venture.
4. Also, it would appear that Defendant has precarious ties with this country since he is not a United States citizen, apparently has a residence outside of the country, and

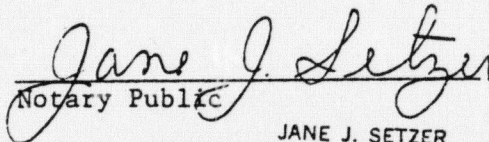
apparently has been spending substantial amounts of time abroad in recent months.

Accordingly, it is Plaintiff's position that the attachment order herein should not be stayed unless an appropriate bond is posted to indemnify Plaintiff for any damages suffered by it as a result of such stay.



Thomas E. Holloran
Chairman of the Board and President
Inter-Regional Financial Group Inc.

Subscribed and sworn to
before me, this Fifth day
of January, 1977.


Notary Public

JANE J. SETZER
Notary Public, Washington County, Minn.
My Commission Expires Oct. 29, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X

INTER-REGIONAL FINANCIAL GROUP, INC. :

Plaintiff :

VS. : CIVIL ACTION

NO. B-76-216

CYRUS HASHEMI :

Defendant :

-----X

New Haven, Connecticut
January 10, 1977

B E F O R E :

JON O. NEWMAN, USDJ

A P P E A R A N C E S :

FOR THE PLAINTIFF:

MESSRS. CUMMINGS & LOCKWOOD
One Atlantic Street
Stamford, Connecticut
By: PAUL E. KNAG, Esq., of Counsel.

FOR THE DEFENDANT:

FRANK MURPHY, ESQUIRE
Norwalk, Connecticut

SANDERS. GALE & RUSSELL
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664 PROSPECT AVENUE
HARTFORD, CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CONNECTICUT

1 physically take possession of these securities that were
2 deposited with the Clerk of the Court.

3 THE COURT: It seems to me that defendant's
4 concern about being sure that any other creditor has to
5 recognize with the Court if it tries to profit by the Court
6 order or to be maximized and the best way to do that would
7 be to have them in the custody of the Court.

8 MR. KNAG: My only concern is that the
9 attachment be properly perfected under State law and if the
10 custody of the Marshal could be extended to include the
11 Clerk of the Court, then that would be within reason and
12 perfectly acceptable to my client. We do want to obtain
13 a perfected attachment here in order to resist the claims
14 of third parties because that is a major effect, attended
15 effect after successful prejudgment remedy.

16 THE COURT: I don't think if the Marshal has
17 them brought to his hand and then he puts them in the
18 registry of the Court -- I think that's where they ought to
19 end up.

20 MR. KNAG: That would certainly seem
21 acceptable, your Honor.

22 THE COURT: All right.

23 So essentially the defendant has some choices.
24 He can either comply with the order with the protection I
25 have indicated that no process is going to be permitted to

1 reach those assets while they are in the custody of the
2 Court in the event the Court of Appeals says they were
3 brought here pursuant to an erroneous order or if he thinks
4 there is too much of a risk in that prospect, he can file a
5 bond for \$150,000 and then the order will be stayed upon
6 the posting of that bond or his third choice is if he
7 doesn't think that's a sufficient guarantee of a stay, then
8 he can ask the Court of Appeals for a more generous stay.

9 MR. KNAG: I would specifically point out,
10 your Honor, that if he wishes to obtain a bond and he has
11 the securities that he would otherwise turn over to the
12 Court here, he has the option of posting those securities
13 to whatever location in order to induce the bonding company
14 to post a bond in an appropriate amount and specifically
15 we are asking for \$300,000 and your Honor has suggested
16 \$150,000 but, in any event, even 300,000 should be an
17 amount of a bond that could be raised if these securities
18 in question were simply turned over to the bonding company
19 as security for the bond.

20 THE COURT: Maybe he can do that, too. I
21 don't know. Maybe you can obtain a bond from a company here
22 that would take the security abroad.

23 MR. MURPHY: I don't know whether that's
24 possible, your Honor.

25 THE COURT: Well, I have indicated the three

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

FEB 14 3 46 PM '77

INTER-REGIONAL FINANCIAL GROUP, INC.)

Plaintiff,)

v.)

CYRUS HASHEMI,)

Defendant.)

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

CIVIL ACTION NO.
B-76-216

MOTION FOR CONTEMPT

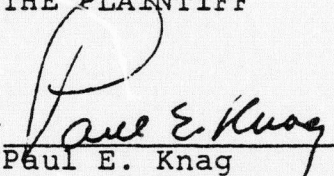
Plaintiff shows the court as follows:

1. On December 28, 1976, this court entered an order requiring the defendant to post certain securities with the deputy clerk of this court for attachment in accordance with the order of this court. A copy of said order is attached hereto as Exhibit A.
2. Thereafter, on January 3, 1977, defendant moved for stay of the attachment order, and said motion was granted to the extent and on the conditions stated in open court on January 10, 1977. A copy of the transcript of said proceeding and the order referring thereto is attached hereto as Exhibit B.
3. Thereafter, an application for stay was made to the Court of Appeals and that application was denied on January 27, 1977.
4. Thereafter, plaintiff's counsel sought informally to induce compliance with said order.
5. Nevertheless, defendant has neither complied with the conditions set forth in the order of this court granting in part the motion for stay, nor complied with the order of the court dated December 28, 1976, requiring him to post securities for attachment.

WHEREFORE, plaintiff moves this court that said defendant be brought before this court to answer for said contempt and that the court fashion an appropriate remedy to induce compliance with said order and to compensate plaintiff for damages and expenses resulting from said contempt.

THE PLAINTIFF

By


Paul E. Knag
Its Attorney
Cummings & Lockwood
One Atlantic Street
Stamford, Connecticut 06904

VERIFICATION

STATE OF CONNECTICUT)

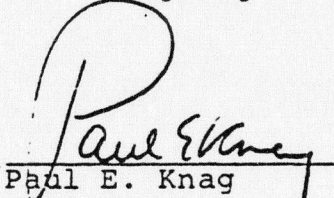
)

ss. Stamford, February 11, 1977

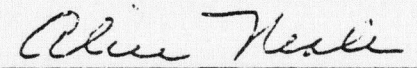
COUNTY OF FAIRFIELD)

PAUL E. KNAG, being first duly sworn, deposes and says:

I am the attorney for the plaintiff in the above-captioned matter, and I do certify that the foregoing is true and correct.


Paul E. Knag

Subscribed and sworn to before me
this 11th day of February, 1977.


Notary Public

My Commission Expires April 1, 1978

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MISCELLANEOUS CALENDAR

SECOND FLOOR COURTROOM

NEW HAVEN

FEBRUARY 18, 1977

10:00 A.M.

HONORABLE JON O. NEWMAN, U. S. D. J.

FEBRUARY 18, 1977

10:00 A.M. - B-76-216 Civil - INTER-REGIONAL FINANCIAL GROUP, INC., vs.
CYRUS HASHEMI

MOTION FOR CONTEMPT

(Defendant Must Appear in Person)

Paul E. Knag
Robert P. Dolian
Cummings & Dolian
One Atlantic Street
Stamford, Conn., 06904

Frank W. Murphy
Slavitt, Connery & Vardamis
618 West Avenue
Norwalk, Conn.

SYLVESTER A. MARKOWSKI
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----x

INTER-REGIONAL FINANCIAL GROUP, INC. :

vs.

: Civil No.

CYRUS HASHEMI

: B-76-216

-----x

New Haven, Connecticut
February 18, 1977

B E F O R E :

HON. JON O. NEWMAN, USDJ

A P P E A R A N C E S :

FOR THE PLAINTIFF:

MESSRS. CUMMINGS & LOCKWOOD
One Atlantic Street
Stamford, Connecticut 06904
By: PAUL E. KNAG, Esq., of Counsel.

FOR THE DEFENDANT:

MESSRS. SLAVITT, CONNERY & VARDAMIS
618 West Avenue
Norwalk, Connecticut
By: FRANK W. MURPHY, Esq., of Counsel.

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NEW HAVEN, CONNECTICUT

1 this case.

-18b-

2 Except for the decision in the Eastern
3 District of Pennsylvania, as far as I know it's a case of first
4 impression, it's a case that's never been decided by the highest
5 court of Connecticut and we are in a diversity situation.

6 The only reason this is in the Federal Court
7 is because of diversity of jurisdiction -- diversity of citizen-
8 ship in a jurisdictional amount.

9 It is not something that involves any Federal
10 issue. It's strictly a question of state law. The enforce-
11 ability of a contract.

12 Finally, I would like to present to the Court
13 an affidavit prepared by my client and ask the Court to take
14 the affidavit into account.

15 MR. KNAG: I object to this document being
16 put into evidence when in violation of the Court's order
17 Mr. Hashemi has failed to appear personally.

18 THE COURT: I think the affidavit can be
19 s ubmitted. I do want to find out what the situation is about
20 his whereabouts. If he has an affidavit, I think he can submit
21 it.

22 MR. MURPHY: He has also addressed a letter
23 to the Court which I would like to submit although I don't think
24 it would be part of the pleadings. A brief note.

25 THE COURT: I am not going to see something

1 that's not part of the papers filed in the case. If you want to
2 file it and counsel may see it, but I am not going to see it as
3 a private correspondence.

4 MR. MURPHY: I will file it and I do not have
5 a copy to give to counsel. It's a handwritten letter.

6 THE COURT: If you don't object to counsel
7 seeing it, then this copy can be opened and filed and it will
8 be available for counsel's inspection.

9 MR. MURPHY: I have no objection to counsel
10 seeing it.

11 MR. KNAG: I would have the same objection
12 to the letter as to the affidavit and also object to it -- that
13 would be the ground on which I am objecting.

14 THE COURT: I will permit it to be filed.

15 MR. MURPHY: In view of what I said, your
16 Honor, I would ask that the Court not make any findings of
17 contempt today and that it not impose any sanctions on the
18 defendant.

19 THE COURT: First thing I want to know, where
20 is Mr. Hashemi.

21 MR. MURPHY: I believe him to be in New York
22 City today on a business matter, your Honor, that was previously
23 scheduled for today.

24 THE COURT: Did you notify him that he was
25 to be present here today?

1 MR. MURPHY: I did, your Honor.

2 THE COURT: When was that?

3 MR. MURPHY: I believe it was Wednesday night.

4 THE COURT: What is surprising to say the
5 least is that he takes the trouble to fill out an affidavit and
6 then to write a letter and he doesn't set forth any cir-
7 cumstances that prevent his attendance here, certainly not any
8 business circumstances. There is a reference to his wife being
9 ill but, I take it, if he can go to New York on business then
10 her illness doesn't keep him in the home.

11 MR. MURPHY: That is correct, it does not.

12 THE COURT: What is his reason for not being
13 here?

14 MR. MURPHY: Well, first of all, I would point
15 out to the Court that the notice of the hearing to counsel was
16 short. This is not a citation for contempt. My notice to him
17 was short. He had other matters previously scheduled. He is
18 present through his counsel and --

19 THE COURT: But the difficulty is that
20 whether it is at all equitable to grant further relief or to put
21 it the other way, since I think the burden is on him at this
22 stage, whether there are any circumstances from him that
23 justify not granting sanctions which need to be explored with
24 him.

25 He is the one apparently who says it is so

1 impossible to file this bond and whether that is so or not, we
2 can only learn from him. It is really extraordinary that he
3 refers to conduct his business in New York on a day when he is
4 not in compliance with the orders of this Court.

5 MR. MURPHY: First of all, your Honor, I
6 would out that while he is a resident of Connecticut, his business
7 activities are in New York and in part outside of the United
8 States, so that it's not as though he were conducting business
9 on a regular basis in Connecticut.

10 Secondly, he is aware that I was asking the
11 Court to reconsider the legal issues involved in the case. On
12 the question of a bond it would seem to me that it's not the
13 type of thing that evidence would be necessary on because we have
14 a situation where we know that in order to obtain a bond for
15 \$150,000, assets substantially in excess of that amount would
16 have to be posted with an insurance company or cash set aside
17 and there is no -- that's a substantial sum of money for anyone
18 regardless of what his own particular personal assets may be.

19 THE COURT: Of course, it's substantial but--

20 MR. MURPHY: I can't make any representation
21 to the Court concerning exactly what his net worth is or financial
22 status is or what his assets may or may not be, but it's a
23 substantial dollar amount that would have to be put aside as
24 security in the case for whatever period of time is involved in
25 reviewing these issues and presumably afterwards if the Court

1 of Appeals disagrees with our legal position so that it is tying
2 up substantial dollar value of assets.

3 THE COURT: Of course, it is. That's
4 exactly what the plaintiff wants, the assets tied up so that if
5 he wins his suit, he will have some security.

6 There is no dispute between the parties that
7 it's substantial. The only dispute is it's not as substantial
8 as the plaintiff wants because the bond is for about half the
9 amount instead of the whole amount.

10 I really don't understand how this defendant
11 thinks that he can defy a court order to appear and send his
12 lawyer in and figure his lawyer will be successful in granting
13 in a stay, particularly where the Court of Appeals for the
14 Second Circuit has denied a stay.

15 If that isn't a contempt --

16 MR. MURPHY: I don't think he is defying the
17 Court order.

18 THE COURT: The order was to attend. He's
19 certainly defying that order.

20 MR. MURPHY: Well, I agree that the order was
21 to attend, your Honor, but it was something where the notice to
22 attend was extremely short. The notice to counsel was to attend.

23 THE COURT: When somebody has already been
24 ordered to do something by a District Court and they have been
25 denied a stay of that order or they have been given an option

1 of abstaining a stay and elect not to comply with the option and
2 they fail to persuade a Court of Appeals to grant this stay. I
3 don't think they can expect a very leisurely process by which
4 they will then be brought to account as to whether they should
5 be in contempt.

6 I think they can expect that proceeding to
7 happen very promptly. I don't think there is any real justifi-
8 cation for expecting a week or two weeks for the scheduling of
9 a hearing to determine whether a person is in contempt.

10 You tell me, when does this man expect to
11 come to this Court to answer this matter?

12 MR. MURPHY: I can't give the Court a specific
13 date at the moment. I have not discussed a date with him and I
14 don't want to make any representations to the Court that I will
15 in fact produce him on a given date. I don't want to be mis-
16 leading in that regard that I have discussed a specific
17 alternate date with him.

18 I am asking, even though he is not present,
19 that the Court not make a finding of contempt.

20 THE COURT: Frankly, I am not inclined to
21 grant him any relief so long as he refuses to attend when he has
22 been ordered to do so. I just don't understand why I should do
23 that at all. It's not just a question of having him do penance
24 by showing him. His presence is needed to determine the
25 equities in this situation.

1 From the plaintiff's claims, it would appear
2 that he can post this bond without giving away his litigating
3 position because if he had securities abroad, he can buy a
4 policy abroad, put the securities up with the company that does
5 business abroad and put the bond in this Court and I have no way
6 of finding out whether there is any reason why he can't do that
7 without his being here.

8 I think the only thing I can do is, I will
9 continue this matter until Wednesday morning. I would do it
10 Tuesday but unfortunately there are too many other things
11 scheduled Tuesday.

12 Wholly apart from any sanctions that may be
13 appropriate in connection with his failure to comply with the
14 original order, I will rule right now so he will know exactly
15 what the situation is, that if he fails to attend on Wednesday
16 morning at 10 o'clock, he will pay a thousand dollars a day for
17 every day thereafter he fails to honor that order to attend in
18 person.

19 MR. MURPHY: I will inform him, your Honor.

20 THE COURT: I will review your papers to see
21 if there is any basis to grant further relief. When he attends,
22 as I expect him to do so, because if the threat of a monetary
23 loss is not sufficient, I can assure you I will issue whatever
24 orders are necessary to affect compliance with that order re-
25 quiring his attendance.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X

INTER-REGIONAL FINANCIAL GROUP, INC. :

vs. : Civil No.

CYRUS HASHEMI : B-76-216

-----X

New Haven, Connecticut
February 23, 1977

B E F O R E :

HON. JON J. NEWMAN, USDJ

A P P E A R A N C E S :

FOR THE PLAINTIFF:

MESSRS. CUMMINGS & LOCKWOOD
One Atlantic Street
Stamford, Connecticut 06904
By: PAUL E. KNAG, Esq., of Counsel.

FOR THE DEFENDANT:

MESSRS. SLAVITT, CONNERY & VARDAMIS
618 West Avenue
Norwalk, Connecticut
By: FRANK W. MURPHY, Esq., of Counsel.

SANDERS, GALE & RUSSELL
Certified Stenotype Reporters

664 PROSPECT AVENUE
HARTFORD, CONNECTICUT

141 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
2 in the company that you mentioned?

3 A That document doesn't require my trip to Teheran.

4 Q You can obtain that promptly?

5 A As promptly as the Iranian courts and Iranian
6 registration papers are returned and translated.

7 MR. MURPHY: I don't believe that's a security
8 however, your Honor, from my understanding.

9 THE COURT: Anything else you want to ask the
10 witness?

11 MR. MURPHY: No.

12 THE COURT: The witness is excused.

13 (The witness was excused.)

14 THE COURT: The defendant represents he can
15 bring the securities in the value of \$60,000, American dollars
16 to the custody of this Court and he has indicated that he would
17 undertake to do that.

18 So, as far as what is pending before me at the
19 moment, I appreciate there is a motion to stay the contempt pro-
20 ceeding which I suppose has been implicitly denied since the
21 proceedings started today, but I won't take any further action
22 in the contempt proceedings for the time being.

23 I want to first of all see the compliance with
24 the undertaking that's been expressed in Court today with respect
25 to that \$60,000 worth of stock.

1 I have before me the defendant's motion to
2 reconsider the underlying ruling and if it appears that the
3 defendant is proceeding in good faith to at least comply with
4 the transfer of the shares before its management account, then
5 I will deal with the motion to reconsider and defer for the time
6 being any specific enforcement steps concerning other possible
7 ways of satisfying the order.

8 It may be that if the order is determined to
9 remain in force that some further order will be entered with
10 respect to these shares in Iran in connection with the planned
11 trip in May.

12 In any event, I think that's as far as I will
13 go for the time being and I will ask that the defendant keep me
14 advised of steps being taken in connection with bringing the
15 \$60,000 worth of shares here.

16 MR. KNAG: Your Honor, Mr. Murphy mentioned
17 to me privately 15 days is the time necessary to comply with the
18 \$60,000 portion of the order.

19 MR. MURPHY: I would ask that period of time,
20 your Honor, to satisfy the requirement with regard to the
21 \$60,000.

22 THE COURT: Well, I'm expecting the defendant
23 to move expeditiously to do that. Fifteen days doesn't seem like
24 an unreasonable length of time but I want to have some indication
25 that steps are being taken to accomplish that.

1 That will be the first step. If I grant your
2 reconsideration, then it might be there won't be other steps.
3 If I deny that, then we will have to proceed to other steps to
4 bring him in compliance.

5 MR. KNAG: May I have leave to submit a
6 Brief in opposition to the motion for re-argument?

7 THE COURT: Yes. How soon do you think you
8 can file that?

9 MR. KNAG: Would the same 15-day period be
10 appropriate?

11 THE COURT: Sure.

CIVIL DOCKET CONTINUATION SHEET

FPI MI-3 14-75 50M 3511

PLAINTIFF		DEFENDANT	DOCKET NO. <u>B-76-2</u>
INTER-REGIONAL FINANCIAL GROUP, INC.		CYRUS HASHEMI	PAGE <u>5</u> OF <u> </u> PAGE
DATE	NR.	PROCEEDINGS	
1977			
1/19	48	Transcript of proceedings held on Jan. 10, 1977 in New Haven before Newman, J., filed.	
1/21		Record on Appeal forwarded Clerk, U. S. Court of Appeals by Certified Mail #598581 with return receipt and Special Delivery, together with 2 extra copies of the Index. Copies of Index and Docket Entries sent Attys. Murphy, Knag and Dolian.	
1/21	49	Defendant's Reply Brief in Opposition to Motion to Dismiss Counterclaim, filed. <i>REC 1-24-77</i>	
1/21	50	Defendant's Reply Brief on Motion to Cite in Additional Defendant, filed. <i>REC 1-24-77</i>	
1/24	51	Deposition of Cyrus Hashemi, filed. <i>REC 1-24-77</i>	
1/24		Supplement to Record on Appeal sent by Certified Mail #598582 with return receipt and Special Delivery to Clerk, U. S. Court of Appeals. Copies of Index and updated Docket Entries sent Attys. Murphy, Knag and Dolian.	
1/24		Civil Appeal Scheduling Order received from U. S. Court of Appeals. (Record on Appeal due on or before Feb. 4, 1977)	
1/27		Certified Mail Receipts Nos. 598581 and 598582, filed. (signature illegible)	
1/24*		Court reporter's notes of proceedings held on Jan. 10 and 11, 1977 at New Haven before Newman J., filed, at New Haven. (Gale, R.)	
1/28		Acknowledgment of receipt of Record and Supplement to the Record on Appeal received from Clerk, U. S. Court of Appeals.	
1/24*		Court reporter's notes of proceedings held on Jan. 17, 1977 at New Haven before Zampano, J., filed at New Haven. (Russell, R.)	
2/4		Defendant's Motion for Stay of Attachment Order, endorsed: "1/10/77 Motion granted only to the extent and on the conditions stated in open court." NEWMAN, J. Copies to counsel. M-2/7/77	
2/14		Plaintiff's Motion for Contempt, filed.	
2/14		Plaintiff's Memorandum in Support of Motion for Contempt, filed.	
2/17		Plaintiff's Notice of Taking Deposition of Cyrus Hashemi on Feb. 25, 1977, at offices of Cummings & Lockwood, Stamford, Conn. filed. <i>REC 2-17-77</i>	
2/18		HEARING held on Motion for Contempt: Motion for Stay and Motion for Reargument, filed by defendant. Affidavit of Cyrus Hashemi, filed. Letter from deft. to Judge Jon O. Newman, filed.	

(Continued on Page 6)

DC-111A REV. 11/77

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF INTER-REGIONAL FINANCIAL GROUP, INC.	DEFENDANT CYRUS HASHEMI	DOCKET NO. B-76-216 PAGE 6 OF _____ PAGES
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DATE	NR.	PROCEEDINGS
1977 2/18	(cont.)	Hearing on Motion for Contempt is continued until Feb. 23, 1977 at 9:30 A.M. If deft. fails to appear on that date he will be required to pay a fine of \$1,000.00 a day for every day that he fails to obey this order in person. Motion for a Protective Order, filed by deft. - motion denied. Pltff. moves to have deposition scheduled for 2/25/77 set for 2/22/77 - motion is granted. Motion for Stay and for Reargument cont'd. until 2/23/77 at 9:30 A.M. NEWMAN, J. M-2/22/77 Court 10:43 a.m. to 11:37 a.m. (Gale, R., Rowe, D.C.)
2/18		Defendant's Motion for Protective Order, endorsed: "2/18/77 Motion denied for reasons stated in open court. NEWMAN, J. M-2/23/77 Copies to counsel. <i>And to the Court</i>
2/23		CONTINUED HEARING on: Motion for Stay and Reargument and Motion for Contempt - Deposition of Cyrus Hashemi, filed. Deft. Cyrus Hashemi, sworn and testified. Court rules that the deft. is to obtain custody of the shares of stock in value of \$60,000.00 and to deposit them in the registry of this Court. Court will take no further action as to Motion for Contempt until deft. complies with the deposit. Motion for stay is denied. Motion for reargument, Court will deal with this motion when Court sees signs of compliance by deft. Deft. is to keep the Court advised of what steps have been taken to obtain his stocks. Court 11:00 to 11:25 a.m. Recess 11:25 a.m. to 11:30 a.m. Hearing resumes 12:55 to 1:45 p.m. NEWMAN, J. M-2/24/77 (Gale, R., Rowe, D. C.)
3/10		Court Reporter's Notes of Proceedings held at New Haven on February 18, 1977 and February 23, 1977, before Newman, J., filed. Gale, R. (Notes filed at New Haven.)
3/14		Plaintiff's Memorandum in Opposition to Defendant's Motion for Reargument of Application for Prejudgment Remedy, filed. <i>Filed 3-15-77</i>
3/25		Transcript of proceedings held on Feb. 18, 1977 in New Haven before Newman, J., filed. (Gale, R.)
3/25		Transcript of proceedings held on Feb. 23, 1977 in New Haven before Newman, J., filed. (Gale, R.)
4/13		RULING ON MOTION FOR REARGUMENT, filed and entered. Motion is denied since the issue of prejudgment remedy is presently on appeal to the U. S. Court of Appeals for the Second Circuit. NEWMAN, J. M-4/13/77 Copies to counsel, Judges, Magistrates and U. Conn. Law Review.

FILED

APR 13 10 22 AM '77

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

-31b-

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

INTER-REGIONAL FINANCIAL
GROUP, INC.

V.

CYRUS HASHEMI

:
:
:
:
:
:

CIVIL NO. B-76-216

RULING ON MOTION FOR REARGUMENT

On October 28, 1976, this Court granted plaintiff's application for a prejudgment remedy. The ruling provided in part for defendant to bring into the District of Connecticut securities now held outside the jurisdiction in an amount sufficient to secure the sum of \$300,000. An injunction implementing that ruling was entered on December 28, 1976. The date for compliance was January 14, 1977. Defendant took an appeal from that order and has now moved to reargue in this Court.^{1/}

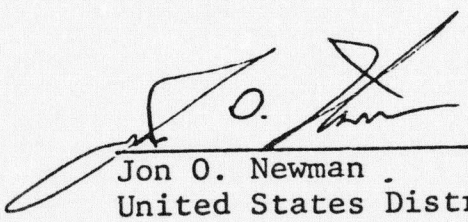
The prejudgment remedy in this case was entered largely on the authority of Fleming v. Gray Mfg. Co., 352 F. Supp. 724 (D. Conn. 1973), a prior decision of this District, from which no appeal was taken. Neither the United States Court of Appeals for the Second Circuit nor the Connecticut Supreme Court has authoritatively spoken on the issue of the authority of a trial court at the prejudgment stage to order a defendant over whom the court has personal jurisdiction to bring into the jurisdiction assets held outside the court's territorial jurisdiction. The Fleming

case supports the order entered, but there is other authority to the contrary. See Nederlandsche Handel-Maatschappij, N.V. v. Sentry Corp., 163 F. Supp. 800 (E.D. Pa. 1958). The defendant raises serious questions going to the power of the Court to issue such an order. These questions deserve authoritative resolution.^{2/}

The matter is on appeal to the Second Circuit at the present time, and this Court lacks jurisdiction to modify its order. Even if jurisdiction were re-acquired and, upon reargument, the order were vacated, the plaintiff would undoubtedly seek to appeal. Since defendant's appeal has been scheduled for briefing and argument by the Court of Appeals, the only effect of granting the motion to reargue would be to delay the time of ultimate resolution of the issue.

Accordingly, the motion for reargument is denied.

Dated at New Haven, Connecticut, this 12 day of April, 1977.



Jon O. Newman
United States District Judge

FOOTNOTES

1/ At the time the motion for reargument was filed, defendant was not in compliance with the Court's order, and a motion for contempt filed by the plaintiff was pending. At the time of the show cause hearing on the contempt motion, the Court indicated to the defendant that it would take no action on his motion to reargue unless and until he took steps toward compliance. Recent communications from the defendant and his counsel show that such steps are being taken. While full compliance has not yet occurred, a ruling on the motion for reargument is now appropriate.

2/ While this Court felt obliged to follow Fleming as the law of this District, were the question open, I would have questioned whether the Uniform Commercial Code provision relied on in Fleming, Conn. Gen. Stat. § 42a-8-317(2), was dispositive. That provision clearly permits a court with in personam jurisdiction over a defendant to require that defendant to bring his securities into the jurisdiction when the lawsuit seeks to determine ownership of the shares and perhaps other interests in the shares as well. But it is far less certain whether that provision authorizes a prejudgment remedy to bring shares into the jurisdiction solely to secure a judgment yet to be entered in a suit unrelated to determining stock interests.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INTER-REGIONAL FINANCIAL GROUP, INC.,	)	NO. T-6930
	)	
Plaintiff-Appellee	)	
	)	
v.	)	
	)	
CYRUS HASHEMI,	)	
	)	
Defendant-Appellant	)	

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MOTION FOR STAY

Pursuant to Rule 8, Federal Rules of Appellate Procedure, appellant, Cyrus Hashemi, petitions this Court for a stay of the mandatory injunction issued by the Hon. Jon O. Newman, United States District Judge, District of Connecticut, in the above captioned case, dated December 28, 1976, pending disposition by this Court of the defendant's appeal filed on January 4, 1977, for the following reasons:

1. By complaint filed on July 28, 1976, accompanied by an application for a prejudgment remedy, the United States District Court for the District of Connecticut issued a temporary restraining

order, which temporary restraining order was modified on August 11, 1976, as appears of record.

2. The accompanying application for prejudgment remedy requested an order attaching a certain bank account at the Union Trust Company, Darien, Connecticut, and an automobile owned by the defendant, as appears in the file. In addition, said order sought a mandatory injunction directing the defendant to surrender to a Deputy Sheriff or the Deputy Clerk of the United States District Court in Bridgeport, all certificates evidencing his securities, endorsed in blank, to be attached in accordance with the order of the Court.

3. On December 28, 1976, the Hon. Jon O. Newman, Judge of the United States District Court for the District of Connecticut, entered an injunction order (copy attached as Appendix A). The defendant filed a notice of appeal on January 4, 1977 and is appealing from that portion of the injunction order directing said defendant to deposit his securities, endorsed in blank, with a Deputy Sheriff or the Deputy Clerk of the Court for the District of Connecticut. (Copy of Memorandum of Decision attached as Appendix B)

4. The defendant will submit a bond for the attachment of the said Union Trust Company bank account and his automobile.

5. The defendant has raised substantial defenses to the complaint, and has interposed a counterclaim which is in excess of the amount of damages claimed by said plaintiff.

6. The undersigned, as counsel for the defendant, is of the opinion that a substantial question of law exists on the question of whether or not the defendant may be ordered, by way of mandatory injunction, to bring securities from outside of the State of Connecticut and from outside of the United States into this jurisdiction for the sole purpose of the levy of an attachment order, and wishes to have this question of law reviewed on appeal by the United States Court of Appeals for the Second Circuit.

7. On January 4, 1977, the defendant filed a motion for stay with the United States District Court for the District of Connecticut, and on January 10, 1977, the Hon. Jon O. Newman entered a judgment denying the stay unless the defendant posts a supersedeas bond in the amount of \$150,000.¹

8. The effective date for compliance with the mandatory injunction is January 14, 1977. By telephone, on January 13, 1977, the Hon. Jon O. Newman consented to an extension of the compliance date of his order through January 18, 1977, in order to permit this motion to be heard on the Court of Appeals motion calendar for January 18, 1977.

9. The defendant will suffer irreparable harm in the event that he is required to bring securities into the state, or in the alternative, post a supersedeas bond in the amount suggested by Judge Newman, for the following reasons:

1. The court reporter advises that a copy of the transcript of the proceedings before Judge Newman on January 10, 1977, cannot be available for a number of days because of other pending matters which the court reporter must complete for criminal cases.

a. The mandatory injunction was in the nature of an attachment order. The sole purpose of the injunction was to compel the defendant to bring his securities into the state for attachment. Although the Court received briefs, affidavits, and a deposition transcript on the question of whether or not a pre-judgment remedy should be ordered, the parties have not completed the pleadings in the case, nor has there been a full hearing on the nature of the plaintiff's complaint and the defenses and counterclaims filed by the defendant.

b. The order directs the defendant to bring securities into the jurisdiction worth a substantial amount, to wit: \$312,500 of publicly traded securities, or an amount up to \$500,000 of privately traded securities.

c. The District Court conditioned the granting of a stay on the posting of a supersedeas bond in the amount of \$150,000. It is impractical to obtain a bond in that amount, because it will be necessary to fully secure the surety in order to obtain the bond.

d. It is clear that by depositing the securities in the registry of the United States District Court, the defendant will be effectively deprived of the use, enjoyment and ownership of the property, the ability to protect his investments, and that insofar as any securities may be pledged as collateral for loans, said collateral will be impaired.

e. The effect of the order is to deprive the defendant of an opportunity to have a review of substantial questions of law

by this Court. At the present time, he runs the risk of complying with the order or being held in contempt for failure to comply, unless a stay is granted.

f. In the event that the defendant is required to bring securities into the District of Connecticut for attachment purposes while his appeal is pending, then any determination made on his appeal will be effectively rendered moot.

g. The effect of the Court order, coupled with the dollar amounts involved, effectively deprives the defendant of an opportunity to defend the case on the merits, because of the cost of compliance with the Court order, and the effect of the order is to deny him an opportunity to defend the case, and is a denial of due process.

h. The effect of the District Court order in granting a prejudgment remedy in this form is to require him to bring assets into the jurisdiction which could not otherwise be seized, which is the normal attachment procedure. In effect, the defendant is placed in a worse position than if a judgment were rendered against him after a trial on the merits.

i. The plaintiff will not be harmed by the stay, in that the securities sought to be attached are not within the District of Connecticut and have not been physically seized by an officer of the Court for the purpose of attachment, or any other purpose. Thus, the plaintiff's position will be no different pending appeal than it is at present.

j. There are substantial questions of law which are to be raised by the appeal of the defendant, which questions of law go to the very nature of the scope of a prejudgment remedy attachment order in the form of a mandatory injunction, and the scope of an order such as this one involves substantial questions as to the effect of the statute and order under the due process clause of the Fourteenth Amendment to the United States Constitution, as spelled out in Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556; Lynch v. Household Finance Corporation, 405 U.S. 538, 92 S. Ct. 1113, 31 L. Ed. 2d 424, rehearing denied, 406 U.S. 911, 92 S. Ct. 1611, 31 L. Ed. 2d 822; and Sniadach v. Family Finance Corporation, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349.

k. The defendant requests that a stay be issued pursuant to Rule 8 of the Federal Rules of Appellate Procedure, without the posting of a supersedeas bond because the dollar amounts involved make the posting of a bond impractical. The limitation of Rule 8(b) of the Federal Rules of Civil Procedure is directory and not mandatory. Thus, the Court need not require a bond.²

1. The defendant's appeal raises important questions of the substantive law of mandatory injunctions in the awarding of prejudgment attachments, and raises important questions of the application of the due process clause to the prejudgment remedy procedure in Connecticut.

2. We would submit that a bond is not mandatory under Section 52-278.1 (c) of the Connecticut General Statutes as argued below by the plaintiff. In addition, we would point out that the requirement of a bond cannot be so onerous as to effectively prevent the remedy granted.

Thus, the public interest will be served by having an issue not previously determined by the Connecticut courts reviewed by this Court in order to set the limits of creditor rights under the prejudgment remedy statutes, in light of the applicable decisions of the United States Supreme Court set forth above.³

For the reasons set forth above, it is respectfully submitted that the defendant should be granted an opportunity to have the mandatory injunction order effectively reviewed on appeal. If he is not granted a stay, then he is faced with the choice of either complying with the Court order, or running the risk of being found

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3. The plaintiff may raise a question as to the appealability of the order of the District Court. It is respectfully submitted that an appeal is allowed by 28 U.S.C. 1291 and 1292(a)(1); by the rule set forth in Cohen v. Beneficial Loan Corporation, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528; and by the Connecticut law under which the plaintiff is requesting a prejudgment remedy. Although we are aware of this Court's decisions in West v. Zurhorst, 425 F. 2d 919, and Financial Services Inc. v. Ferrandina, 474 F. 2d 743, we would submit that those cases are not applicable to this situation because of the unique facts of this case and because of the subsequent decisions of the United States Supreme Court in the cases cited in paragraph 9j above. In addition, since the order was issued pursuant to Connecticut statutes, we would point out that the Connecticut Supreme Court has determined that the granting of a prejudgment remedy is a final judgment and is appealable. E. J. Hansen Elevator Company, Inc. v. Stoll, 167 Conn 623 (1975). The Connecticut Legislature, subsequent to that decision, adopted Section 52-278 1 (a) of the Connecticut General Statutes, which provides that any prejudgment remedy granted "shall be deemed a final judgment for purposes of appeal". In any event, we would submit that these questions can be determined only upon motion properly addressed to this Court, and would request an opportunity to file a brief and present arguments specifically on the issue of appealability.

in contempt of the Court's order. Thus, he will be on the horns of the classic dilemma. On one hand, if he complies with the court order, then his appeal will thereby be effectively rendered moot. Conversely, if he preserves his position on appeal, it will only be at the risk of being found in contempt of a Court order, with all of the sanctions provided by the Federal Rules of Civil Procedure and the statutes, or by the expenditure of an amount in excess of \$150,000. In either event, in the absence of a stay pending appeal, he will be effectively deprived of an opportunity for judicial review.

For these reasons, it is respectfully submitted that justice and equity require that he be granted a stay of the injunction order entered by the United States District Court for the District of Connecticut dated December 28, 1976.

Respectfully submitted,

THE DEFENDANT, CYRUS HASHEMI

By

Frank W. Murphy, His Attorney
SLAVITT, CONNERY & VARDAMIS
618 West Avenue
Norwalk, Connecticut 06852